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May 6, 2015

BY HAND

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: ***Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations,*** **MB Docket No. 14-90**
WRITTEN *EX PARTE* PRESENTATION;
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

In this submission, AT&T Inc. ("AT&T") responds to the ex parte letter filed in this docket by Netflix, Inc. ("Netflix") on May 4, 2015.

Before it began pressing for deal conditions in support of its own business agenda, Netflix believed that the merger of AT&T and DIRECTV would benefit online video distributors ("OVDs") and their customers. Indeed, shortly after the transaction was announced last year, Netflix's CFO publicly stated that this deal is a "plus for Netflix."[1] Now, however, Netflix continues to insist that it will be harmed unless the Commission prohibits AT&T (and only AT&T) from charging content providers that seek to connect to AT&T's network. For the reasons articulated in AT&T's April 21, 2015 submission and emphasized further below,[2] the

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[1] Netflix Inc., *JPMorgan Global Technology, Media and Telecom Conference Call*, Seeking Alpha (May 20, 2014), *available at* http://www.nasdaq.com/aspx/call-transcript.aspx?StoryId=2228363&Title=netflix-nflx-presents-at-jpmorgan-global-technology-media-and-telecom-conference-transcript-.

[2] *See* Letter from Maureen R. Jeffreys, Counsel for AT&T Inc., and William M. Wiltshire, Counsel for DIRECTV, to Marlene H. Dortch, FCC, MB Dkt No. 14-90 (Apr. 21, 2015) (summarizing extensive evidence).

Commission should reject any such condition, especially when imposed on only one company in a hotly-contested broadband marketplace dominated by incumbent cable companies.

Amid all its recent protests, Netflix neglects to mention an important fact—Netflix has entered into a long-term agreement for direct access to AT&T's network on terms that will allow Netflix to continue to thrive in the marketplace. Indeed, Netflix has experienced spectacular and consistent growth from 2013 to the present, including during the time periods when Netflix's congestion occurred. Today, Netflix enjoys a contract with AT&T **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

[END AT&T HIGHLY CONFIDENTIAL INFORMATION] and cannot seriously be considered to have any effect on Netflix's competitiveness.[5] Moreover, Netflix has publicly stated that its recent interconnection deals, like the one with AT&T, are not negatively affecting its margins.[6]

In addition, Netflix's May 4 filing ignores two technological and economic realities: AT&T could not effectively and persistently degrade any OVD without degrading *all* OVDs and degrading any single OVD, much less all OVDs, would risk significant loss of broadband and bundle customers while saving few, if any, video customers. Providing high quality broadband services aimed at attracting and retaining profitable broadband and bundle customers is, and will remain, at the heart of AT&T's business. The record shows that when AT&T customers drop

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[3] Declaration of Scott Mair, Senior Vice President of Technology Planning and Engineering, AT&T Services, Inc. ¶ 26 (Oct. 15, 2014) ("Mair Decl.").

[4] Mair Decl. ¶ 27; Joint Opposition of AT&T Inc. and DIRECTV to Petitions to Deny and Condition and Reply to Comments at 44 (filed Oct. 16, 2014) ("Joint Opposition").

[5] Mair Decl. ¶¶ 26-28; *see also* Netflix 2014 10-K at 41 (reporting approximately $3.8 billion in costs of revenue for 2014).

[6] Thomson Reuters StreetEvents Edited Transcript, "NFLX – Q2 2014 Netflix Inc Earnings Call," July 21, 2014, *available at* http://files.shareholder.com/downloads/NFLX/0x0x770177/eda92767-92b8-483b-ba53-ad97597b91f5/NFLX-Transcript-2014-07-21.pdf ("Well on a short-term basis, I think there's great assurances in the sense that we've been able to sign these immediate interconnect deals, and *still able to achieve our margin targets, and our guidance implies those costs are embedded*.") (emphasis added).

broadband services, they almost always drop AT&T video and other entertainment services as well.[7] Thus, a degradation strategy would risk losing not only broadband profits, but also associated, and much greater, double and triple-play revenues and profits, which include video profits.[8] Simply put, it makes no economic or business sense for AT&T to pursue the hypothetical OVD degradation strategy put forth by Netflix, either before or after the transaction.

While Netflix claims that AT&T documents show that AT&T did not expect degraded broadband performance to result in customer losses, a careful inspection of those documents (as well as other documents not cited by Netflix) confirms that **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

[**END AT&T HIGHLY CONFIDENTIAL INFORMATION]** and (iii) AT&T is and will remain strongly motivated to offer consumers a first-class broadband product.

- For example, AT&T documents show that **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

  [END AT&T HIGHLY CONFIDENTIAL INFORMATION]

- An AT&T presentation on **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

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7 ATT-FCC-000000040 - ATT-FCC-000000044 (filed June 25, 2014) (AT&T ordinary-course Product Churn by Bundle Type reports showing that an average of approximately **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of all disconnecting U-verse broadband subscribers also disconnected all other AT&T products (or only kept wireless service)).

8 Joint Opposition at 37; Reply Declaration of Michael L. Katz ¶ 75 (Oct. 15, 2014).

9 ATT-FCC-00445100 at 1.

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- Numerous AT&T documents in the record, including ones not cited by Netflix, show that **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

  [END AT&T HIGHLY CONFIDENTIAL INFORMATION]

- According to internal AT&T communications in **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

  [END AT&T HIGHLY CONFIDENTIAL INFORMATION]

[10] ATT-FCC-03226539 at 3, 10, 18-19.

[11] *See, e.g.,* ATT-FCC-00438444 at 25; ATT-FCC-01080292 at 5, 18; ATT-FCC-00113248 at 1-3; ATT-FCC-00445100 at 1.

[12] ATT-FCC-00438444 at 15.

[13] *Id.* at 11; ATT-FCC-03226539 at 3, 10, 18-19.

[14] AT&T-FCC-00438546.

REDACTED - FOR PUBLIC INSPECTION

The extensive testimony, record evidence and economic analyses in this proceeding conclusively demonstrate that AT&T has neither the incentive nor ability to engage in an OVD degradation strategy. Netflix has not submitted evidence to the contrary, and Netflix's alleged congestion problems have been addressed through a contractual arrangement that is favorable to Netflix. In short, market forces have solved any alleged issue that Netflix seeks to inject into this transaction, and Netflix should continue to enjoy its leadership position as one of the world's largest OVD providers.

Respectfully submitted,

Maureen R. Jeffreys

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